

BANKING DIVISION[187]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 535B.14, the Iowa Division of Banking (IDOB) hereby gives Notice of Intended Action to amend Chapter 18, “Mortgage Bankers, Mortgage Brokers, and Real Estate Closing Agents,” Iowa Administrative Code.

The proposed amendments reflect partial compliance with Iowa Code section 17A.7(2), which states that, as of July 1, 2012, “over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency’s rules [and t]he goal of the review is the identification and elimination of all rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies.” The amendments to Chapter 18 are proposed as a result of the IDOB’s review of the existing administrative rules. The proposed amendments are intended to replace antiquated terminology and statutory references, to eliminate outdated requirements, and to update certain ongoing requirements to accurately reflect current practice, specifically regarding the use of the nationwide multistate licensing system.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before April 19, 2017. Comments should be directed to Zachary Hingst, Legal Counsel, Iowa Division of Banking, 200 E. Grand Avenue, Suite 300, Des Moines, Iowa 50309; by telephone at (515)281-4014; or by e-mail to zak.hingst@idob.state.ia.us.

No existing fees are being altered and no new fees are being added; therefore, the IDOB has concluded that the proposed amendments will not have any fiscal impact.

These rules are subject to waiver or variance pursuant to 187—Chapter 12.

No existing authorized activities are being restricted, no new activities are being authorized, no existing fees are being increased, and no new fees are being added. The IDOB has therefore concluded that the proposed amendments should not have an impact on jobs in Iowa.

These amendments are intended to implement Iowa Code chapters 17A and 535B.

The following amendments are proposed.

ITEM 1. Amend rule **187—18.1(17A,535B)**, definitions of “License application,” “Licensee,” “Mortgage loan originator,” “Nationwide mortgage licensing system and registry” and “Services a loan,” as follows:

“*License application*” means an electronic application or registration submitted to the administrator for a license to operate as a mortgage banker, mortgage broker, or closing agent in accordance with the provisions of ~~2009 Iowa Code Supplement~~ section 535B.4 ~~as amended by 2010 Iowa Acts, Senate File 2348, section 4.~~

“*Licensee*” means a person who has a license to operate as a mortgage banker, mortgage broker, or closing agent in accordance with the provisions of ~~2009 Iowa Code Supplement~~ section 535B.4 ~~as amended by 2010 Iowa Acts, Senate File 2348, section 4.~~

“*Mortgage loan originator*” means a natural person who is licensed under ~~2009 Iowa Acts, Senate File 355, Iowa Code chapter 535D~~ and 187—Chapter 19.

“*Nationwide ~~mortgage multistate~~ licensing system and registry*” or “*NMLS&R NMLS*” means a ~~mortgage multistate~~ licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage providers, mortgage lenders, mortgage brokers, and mortgage servicers.

“Services a loan” or “servicing a loan” means undertaking the direct collection of payments on a loan from the borrower or holding the right to undertake direct collection of payments on a loan from the borrower. Undertaking the direct collection of payments means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan. Holding the right to undertake direct collection of payments means holding the right to service a loan, including where the holder of this right contracts with or otherwise arranges for another person to service the loan.

ITEM 2. Amend rule 187—18.2(17A,535B) as follows:

187—18.2(17A,535B) Application for license.

18.2(1) Application for a license to operate as a mortgage banker, mortgage broker, or closing agent shall be submitted to the administrator through the ~~NMLS&R~~ NMLS, and all requested information shall be provided on or with the application form. The administrator may consider an application or registration withdrawn if ~~it~~ the application or registration does not contain all of the information required and the information is not submitted to the administrator within 30 days after the administrator requests the information.

18.2(2) Each officer, director, and individual who has control of an applicant must provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation.

~~18.2(2)~~ **18.2(3)** The license application shall be accompanied by a fee of \$500 plus \$40 per additional branch location. The \$500 fee is not subject to refund. The applicant shall also pay any additional fees required by the ~~NMLS&R~~ NMLS including but not limited to the following: system processing fees, background check fees, and credit background check fees.

~~18.2(3)~~ **18.2(4)** If any information changes after the filing of the initial application, the applicant shall provide updated information to the administrator in writing within 10 ~~calendar~~ days of the change. Failure to provide updated information when a change has occurred may result in denial of the application.

~~18.2(4)~~ **18.2(5)** The administrator shall approve or deny a license application in accordance with the provisions of 2009 Iowa Code ~~Supplement~~ section 535B.5 ~~as amended by 2010 Iowa Acts, Senate File 2348, section 5.~~ A person shall not be eligible for licensing as a mortgage banker or mortgage broker unless all mortgage loan originators who are employed by, under contract with, or exclusive agents of the person have successfully completed the licensing requirements of Iowa Code chapter 535D.

~~18.2(5)~~ **18.2(6)** An applicant for a mortgage banker or mortgage broker license must file with the administrator a bond complying with the provisions of 2009 Iowa Code ~~Supplement~~ section 535B.9 ~~as amended by 2010 Iowa Acts, Senate File 2348, section 7.~~ The bond amount required to be filed and maintained by the applicant shall be set and adjusted as necessary annually in accordance with the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, underwritten, and serviced, as the case may be, by the applicant or licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

~~18.2(6)~~ **18.2(7)** An applicant for a closing agent license must file with the administrator a bond in the amount of \$25,000 which complies with the provisions of 2009 Iowa Code ~~Supplement~~ section 535B.9 ~~as amended by 2010 Iowa Acts, Senate File 2348, section 7.~~

~~18.2(7)~~ **18.2(8)** Licenses expire on the next December 31 after issuance. However, licenses granted on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a license granted on November 17, 2008, would not expire until December 31, 2009.

ITEM 3. Amend subrule 18.3(2) as follows:

18.3(2) Application to renew a license shall be submitted to the administrator ~~before~~ by December 1 of the year of expiration through the ~~NMLS&R~~ NMLS. All requested information shall be provided to the administrator as directed by the ~~NMLS&R~~ NMLS. Applications for renewal of a license to transact business solely as a mortgage broker or closing agent must be accompanied by a fee of \$200. Applications for renewal of a license to transact business as a mortgage banker must be accompanied by a fee of \$400. In addition, the mortgage banker or mortgage broker licensee shall pay a branch office renewal fee of \$40 per branch. The administrator may assess late fees of up to \$10 per day for applications submitted after December 1.

ITEM 4. Adopt the following new rule 187—18.4(17A,535B):

187—18.4(17A,535B) Grounds for approval or denial.

18.4(1) The superintendent shall approve or deny a license application in accordance with the provisions of Iowa Code section 535B.5.

18.4(2) The following may be considered evidence that the business of the applicant may not be operated honestly in the public interest consistent with the purposes of Iowa Code chapter 535B and may therefore be considered grounds for denial of an application:

a. An applicant, or an officer, director, or individual who has control of an applicant, has had a mortgage loan originator license or any lending license revoked in any governmental jurisdiction.

b. An applicant, or an officer, director, or individual who has control of an applicant, has been convicted of, or has pleaded guilty or no contest to, a felony in a domestic, foreign, or military court if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering. A pardon of a conviction shall not constitute a conviction for purposes of this subrule.

ITEM 5. Amend rule 187—18.7(17A,535B), introductory paragraph, as follows:

187—18.7(17A,535B) Notice of significant events. A licensee shall notify the administrator ~~immediately and in writing~~ within ~~five business~~ 10 days of the occurrence of any of the following events.

ITEM 6. Amend rule 187—18.8(17A,535B) as follows:

187—18.8(17A,535B) Changes in the licensee's business; fees.

18.8(1) No change.

18.8(2) A licensee shall notify the administrator through the ~~NMLS&R~~ NMLS of a change in the location, the addition, or the closing of any office prior to the change, addition, or closure.

18.8(3) A mortgage banker or mortgage broker licensee shall maintain on file with the administrator, through the ~~NMLS&R~~ NMLS, a list of all mortgage loan originators who are employed by, under contract with, or exclusive agents of the licensee. The licensee shall pay any fees assessed by the ~~NMLS&R~~ NMLS to add a mortgage loan originator to the licensee's list in the ~~NMLS&R~~ NMLS.

18.8(4) When a mortgage loan originator ceases to be employed by, under contract with, or an exclusive agent of a mortgage banker or mortgage broker licensee, the licensee shall notify the administrator, through the ~~NMLS&R~~ NMLS, within ~~five business~~ 10 days. The notification shall include the reasons for the termination of the mortgage loan originator's employment, contract, or agency.

18.8(5) A mortgage banker or mortgage broker licensee shall notify the administrator through the ~~NMLS&R~~ NMLS of the addition of any mortgage loan originator, owner, officer, partner, or director within ~~five business~~ 10 days of addition.

18.8(6) No change.

18.8(7) ~~NMLS&R~~ NMLS system processing fees. In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the ~~NMLS&R~~ NMLS attributed to the licensee's record in the ~~NMLS&R system~~ NMLS including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

18.8(8) When a change of control of a licensee is proposed, the party that will assume control of the licensee shall give notice to the superintendent through the NMLS at least 60 days before the proposed change will take effect. Control is defined in Iowa Code section 535B.6A. The party that will assume control of the licensee shall furnish the superintendent through the NMLS with the same information required of initial applicants for a license, along with the appropriate fee. The party that will assume control may be required to provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. The superintendent shall approve or deny the request in accordance with the provisions of Iowa Code section 535B.5 and rule 187—18.4(17A,535B).

ITEM 7. Amend subrule 18.16(4) as follows:

18.16(4) Application log. A mortgage banker or mortgage broker licensee shall maintain an application log. The application log is a chronological list of applications received. The application log shall include the name of the applicant; date the application was completed; the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique ~~NMLS&R~~ NMLS identification number assigned to each; notes for action taken on applications (such as “approved,” “denied,” or “withdrawn”); and date of action. For approved applications, the application log shall show the date the loan closed and the name of the lender. For purposes of these rules, information from an applicant becomes an application when the licensee obtains the name and social security number of the applicant.

ITEM 8. Amend subrule 18.16(5) as follows:

18.16(5) Loan register. A mortgage banker or mortgage broker licensee shall maintain a loan register. The loan register shall include the following information for every loan that is made: the date of the transaction; the name of the borrower; the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique ~~NMLS&R~~ NMLS identification number assigned to each; and the amount financed. The register shall be kept chronologically in the order the loans closed. The loan register may be combined with the application log.

ITEM 9. Amend subrule 18.16(6) as follows:

18.16(6) Application file. A mortgage banker or mortgage broker licensee shall maintain an application file for each application received. The application file shall contain copies of the application and any required disclosures. A copy of any adverse action taken on the application, including any documentation supporting that action such as an appraisal report or credit report, shall also be placed in the application file. The application file shall also contain the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique ~~NMLS&R~~ NMLS identification number assigned to each.

ITEM 10. Amend subrule 18.16(7) as follows:

18.16(7) Loan file. A mortgage banker or mortgage broker licensee shall maintain a loan file for each loan made. The loan file consists of the application file, the appraisal report, underwriting verifications, the closing file described in subrule 18.22(6) including other supporting documentation, and documents from the loan closing. These documents include: note, mortgage, all truth-in-lending disclosures, and all Real Estate Settlement Procedures Act disclosures. The loan file shall also contain the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique ~~NMLS&R~~ NMLS identification number assigned to each.

ITEM 11. Amend subparagraph **18.16(11)“a”(3)** as follows:

(3) Information included in the “~~good faith estimate~~” (GFE) initial disclosure required under the federal Real Estate Settlement Procedures Act, including the rate, the date of any interest rate lock, and an itemization of settlement charges and all broker compensation.

ITEM 12. Amend subparagraph **18.16(11)“a”(4)** as follows:

(4) Information included in the final HUD-1 Settlement Statement closing disclosure.

ITEM 13. Amend rule 187—18.17(17A,535B) as follows:

187—18.17(17A,535B) Mortgage call reports. Each mortgage banker and mortgage broker licensee shall submit to the ~~NMLS&R~~ NMLS reports of condition, which shall be in such form and shall contain such information as the ~~NMLS&R~~ NMLS shall require. For each day after the ~~NMLS&R-established~~ NMLS-established due date that the report is ~~no~~ not received, the administrator may assess late fees of \$10 per day.

ITEM 14. Amend paragraph **18.18(1)“d”** as follows:

d. An advertisement shall clearly show the licensee’s unique ~~NMLS&R~~ NMLS identification number.

ITEM 15. Amend paragraph **18.20(2)“j”** as follows:

j. The licensee fails to notify the administrator within ~~five~~ 10 days of the occurrence of one of the significant events set forth in rule 187—18.7(17A,535B).

ITEM 16. Amend subrule 18.22(2) as follows:

18.22(2) A closing agent shall disburse or deliver funds only in accordance with closing instructions from the lender, the attorney’s title opinion or title commitment, and the real estate purchase agreement, when applicable. All disbursements shall agree ~~to~~ with the final signed ~~settlement-statement~~ closing disclosure.

ITEM 17. Amend paragraph **18.22(6)“b”** as follows:

b. A signed ~~settlement-statement~~ closing disclosure that totals properly and is supported by written instructions for all amounts (such as closing instructions, invoices, or written payoffs). If the ~~settlement~~ closing disclosure requires changes, a copy of the new ~~settlement-statement~~ closing disclosure with changes clearly documented shall be maintained in the file.

ITEM 18. Amend paragraph **18.22(6)“e”** as follows:

e. Detailed records of the individuals present at each closing, ~~including copies of photo identification,~~ and specifying where and when each closing is held.

ITEM 19. Amend **187—Chapter 18**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A and 535B and 2010 Iowa Acts, Senate File 2348.